

LINDBERGH PORTER, Bar No. 100091
OSWALD B. COUSINS, Bar No. 172239
LITTLER MENDELSON
A Professional Corporation
650 California Street
20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940

Attorneys for Defendant
TIMEC COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TOMMIE BELLAMY,

Plaintiff,

v.

TIMEC COMPANY, INC.,

Defendant.

Case No. C-10-03037 EMC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium
5 or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
6 tangible things) that are produced or generated in disclosures or responses to discovery in this
7 matter.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how generated,
9 stored or maintained) or tangible things that qualify for protection under standards developed under
10 F.R.Civ.P. 26(c).

11 2.4 “Highly CONFIDENTIAL—Attorneys’ Eyes Only” Information or Items: extremely
12 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
13 create a substantial risk of serious injury that could not be avoided by less restrictive means.

14 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material
17 in this action.

18 2.7 Designating Party: a Party or non-party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “Highly
20 CONFIDENTIAL—Attorneys’ Eyes Only.”

21 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL” or as “Highly CONFIDENTIAL—Attorneys’ Eyes Only.”

23 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to
24 represent or advise a Party in this action.

25 2.10 House Counsel: attorneys who are employees of a Party.

26 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
27 support staffs).
28

1 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
 2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 3 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
 4 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a
 5 competitor of a Party. This definition includes a professional jury or trial consultant retained in
 6 connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support services
 8 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
 9 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected
 12 Material (as defined above), but also any information copied or extracted therefrom, as well as all
 13 copies, excerpts, summaries, or compilations thereof; plus testimony, conversations, or presentations
 14 by parties or counsel to or in court or in other settings that might reveal Protected Material.

15 4. DURATION

16 Even after the termination of this litigation, the confidentiality obligations imposed by
 17 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 18 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 19 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the
 20 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 21 including the time limits for filing any motions or applications for extension of time pursuant to
 22 applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 25 non-party that designates information or items for protection under this Order must take care to limit
 26 any such designation to specific material that qualifies under the appropriate standards. A
 27 Designating Party must take care to designate for protection only those parts of material, documents,
 28 items, or oral or written communications that qualify—so that other portions of the material,

1 documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order. Both the Producing Party and Receiving Party have a
3 right to designate material as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only.”

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
7 and burdens on other parties), may expose the Designating Party to sanctions.

8 If it comes to a Party’s or a non-party’s attention that information or items that it
9 designated for protection do not qualify for protection at all, or do not qualify for the level of
10 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
11 withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
13 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
14 that qualifies for protection under this Order must be clearly so designated before the material is
15 disclosed or produced or in the case of the Receiving Party within 30 days of receipt of the material.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of depositions or
18 other pretrial or trial proceedings), that the Producing Party (or Receiving Party where applicable)
19 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
20 ONLY” on each page that contains protected material. If only a portion or portions of the material
21 on a page qualifies for protection, the Producing Party (or Receiving Party where applicable) also
22 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)
23 and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

25 A Party or non-party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has indicated which
27 material it would like copied and produced. During the inspection and before the designation, all of
28 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL—

ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY") on each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days after receipt of the relevant transcript to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 2 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only portions of the information
 3 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 4 portions, specifying whether they qualify as “CONFIDENTIAL” or as “Highly CONFIDENTIAL—
 5 Attorneys’ Eyes Only.”

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 7 designate qualified information or items as “CONFIDENTIAL” or “Highly CONFIDENTIAL—
 8 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
 9 protection under this Order for such material. If material is appropriately designated as
 10 “CONFIDENTIAL” or “Highly CONFIDENTIAL—Attorneys’ Eyes Only” after the material was
 11 initially produced, the Receiving Party (or the Producing Party as the case may be) on timely
 12 notification of the designation, must make reasonable efforts to assure that the material is treated in
 13 accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 16 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 17 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
 18 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
 19 after the original designation is disclosed.

20 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
 21 confidentiality designation must do so in good faith and must begin the process by conferring
 22 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
 23 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
 24 that the confidentiality designation was not proper and must give the Designating Party an
 25 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
 26 designation is offered, to explain the basis for the chosen designation. A challenging Party may
 27 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
 28

process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this

1 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
2 hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
5 the “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
7 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
8 Protective Order” (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and professional vendors to whom disclosure is
11 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
12 Protective Order” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
15 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
16 Protected Material must be separately bound by the court reporter and may not be disclosed to
17 anyone except as permitted under this Stipulated Protective Order.

18 (g) the author of the document or the original source of the information.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
20 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

23 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
24 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
25 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
26 hereto as Exhibit A;

(b) House Counsel of a Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation; and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burden and the expense of seeking protection in that court of its

1 confidential material—and nothing in these provisions should be construed as authorizing or
2 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this Stipulated
6 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
7 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
8 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
10 Be Bound” that is attached hereto as Exhibit A.

11 10. FILING PROTECTED MATERIAL

12 Without written permission from the Designating Party or a court order secured after
13 appropriate notice to all interested persons, a Party may not file in the public record in this action
14 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5.

16 11. FINAL DISPOSITION

17 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
18 days after the final termination of this action, each Receiving Party must return all Protected
19 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
20 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the
21 Protected Material. With permission in writing from the Designating Party, the Receiving Party may
22 destroy some or all of the Protected Material instead of returning it. Whether the Protected Material
23 is returned or destroyed, the Receiving Party must submit a written certification to the Producing
24 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that
25 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed
26 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or other forms of reproducing or capturing any of the Protected Material.
28 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,

1 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
2 materials contain Protected Material. Any such archival copies that contain or constitute Protected
3 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
6 its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
8 no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the material covered by
11 this Protective Order.

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 Dated: March 8, 2011

14
15
16 /s/ Oswald B. Cousins
17 OSWALD B. COUSINS
18 LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
TIMEC COMPANY, INC.

19 Dated: March 8, 2011

20
21 /s/ Pamela Pitt
22 PAMELA PITT
23 MARIA BOURN
24 LAW OFFICE OF PAMELA PITT
Attorneys for Plaintiff
TOMMIE BELLAMY

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26
27 DATED: 3/9/2011

28 
HON. CLAUDIA WILKEN

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have read
 in its entirety and understand the Stipulated Protective Order that was issued by the United States
 District Court for the Northern District of California on _____ in the case of
Tommie Bellamy v. TIMEC, Company, Inc., Case No. C 10-CV-03037-CW. I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name]
 of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]

Firmwide:100483483.1 052001.1031